

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

LOCAL UNION NO. 459 OF THE  
INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS,  
AFL-CIO

Plaintiff,

v.

PENNSYLVANIA ELECTRIC COMPANY,  
a First Energy Company

Defendant.

Civil Action No. 04-347E  
Electronically Filed

RESPONSE TO DEFENDANT'S MOTION TO REOPEN CASE AND MOTION TO  
CORRECT THE RECORD

NOW COMES the plaintiff by its attorneys Marianne Oliver and Gilardi Cooper & Lomupo, and files the following response to Defendant's Motion to Reopen Case and Motion to Correct the Record:

## PROCEDURAL HISTORY

Plaintiff Union filed the within action to compel the Defendant to agree to arbitrate a grievance under the collective bargaining agreement. The grievance was filed to challenge the Defendant Employer's actions in making unilateral changes to certain forms that it was requiring employees to sign. Following the Defendant's answer to the Plaintiff's complaint, a status conference was set for April 28, 2005, and a court reporter transcribed the statements of counsel and Honorable Judge McLaughlin at the conference. At the conclusion of the status conference, the Defendant agreed to

arbitrate the dispute. The Plaintiff and Defendant thereafter filed a Stipulation of Dismissal, and the Court ordered the dismissal of the action on June 9, 2005.

Defendant seeks to reopen this civil action on the basis of its claim that the court reporter made transcription errors in the transcript of the status conference conducted on April 28, 2005.

#### **PLAINTIFF COUNSEL'S RESPONSE TO DEFENDANT'S COUNSEL**

Following Defendant Counsel's initial request that Plaintiff's counsel agree to correct the transcript, several telephone conversations occurred between counsel, in addition to numerous telephone calls between the Defendant's in-house counsel and Plaintiff's counsel to settle the underlying grievance. The matter involving correction of the transcript was not resolved, in that it appeared that the matter would be moot in light of the grievance settlement discussions, which began in the fall of 2005.

On February 9, 2006, Defendant Counsel Gary Spring left a message on Plaintiff's counsel's voice mail demanding that she agree to correct the transcript. Although Plaintiff's counsel Marianne Oliver was in Gettysburg, PA on February 9, upon her return to the office in the afternoon on February 9, 2006, the transcript was reviewed, pursuant to Defendant counsel Spring's request. Based upon telephone calls between Defendant's in-house counsel Timothy Hayes and the undersigned on February 9, it also appeared that the underlying grievance would not be resolved, and that therefore, Defendant counsel Spring's contention that the transcript was incorrect could possibly have some impact upon the grievance arbitration proceedings, scheduled for February 23, 2006.

On February 9, 2006, a letter was sent to Defendant Counsel Spring by the

undersigned, attached as Exhibit A. Essentially, the errors claimed by Attorney Spring did not appear to be court reporter transcription errors. I advised Attorney Spring that I did not think it was appropriate to change what persons were saying, particularly the Judge. Contrary to Defendant counsel Spring, it is the Defendant, not the Plaintiff, who is attempting, by seeking to change the certified court reporter's transcript, to take advantage of a "changed" transcript in arbitration.

Wherefore, it is respectfully submitted that the Defendant's Motions to Reopen the Case and Correct the Record be denied.

Respectfully submitted,

BY /s/ Marianne Oliver

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Marianne Oliver, Esquire  
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CERTIFICATE OF SERVICE

I, Marianne Oliver, certify that the foregoing Response to Defendant's Motion to Reopen Case and Motion to Correct the Record was served upon the following by first class mail, postage prepaid on February 17, 2006:

Gary Spring, Esquire  
Roetzel & Andress, LPA  
222 South Main Street  
Akron OH 44308

/s/ Marianne Oliver  
Marianne Oliver, Counsel for Plaintiff

Dated: February 17, 2006